



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. IAN HARVEY CHEATHAM
CR-15-0286-PR**

PARTIES:

Petitioner: Ian Harvey Cheatham

Respondent: State of Arizona

FACTS:

Two police officers on patrol in May 2013 pulled over a car with a darkened windshield that appeared to violate Arizona law. Ian Harvey Cheatham was driving. As one officer spoke with Cheatham, he noticed a “strong odor” of burnt marijuana coming from inside the vehicle.

Cheatham complied with a request to step out of the car. Based upon the “plain smell” of marijuana, the officer performed a search. During his warrantless search, he found an empty prescription bottle (which smelled of unburnt marijuana when opened) in the center console, an empty cigar package on the driver’s seat, and a small amount of unburnt marijuana (about the size of a marble) under the seat. The officer seized the marijuana and arrested Cheatham. After receiving the *Miranda* warnings, Cheatham admitted that the prescription bottle was his. The importance of the cigar package was addressed by the officer at a suppression hearing, at which he said that people would remove tobacco from a cigar and fill the void with marijuana to create a “blunt.”

Cheatham was charged with illegal possession or use of marijuana.

Before trial, he filed a motion to suppress. He argued that the “automobile exception” to the search warrant requirement no longer authorized warrantless searches based on the “plain smell” of marijuana after the enactment of the Arizona Medical Marijuana Act (AMMA). But, there was no evidence that Cheatham was a registered, qualified AMMA patient.

After an evidentiary hearing, the trial court denied the motion. The court recognized that the issue might be one of first impression. However, it rejected Cheatham’s argument that under the AMMA police must presume that any marijuana they smell or see is lawful, and that they must verify otherwise before probable cause is established. After a bench trial, the court found Cheatham guilty of misdemeanor possession or use of marijuana (re-designated) and placed him on supervised probation for one year.

The court of appeals affirmed the conviction and sentence. It reasoned that the AMMA did not decriminalize the possession or use of marijuana in Arizona, although it is a crime subject to immunity, if the possession or use is in compliance with the Act. A defendant must satisfy the

burden to prove that his actions fall within the range of immune action. The court of appeals Division One was aware that Division Two recently had held that “plain smell” alone was insufficient to provide probable cause for a search warrant to issue in *State v. Sisco*, 2015 WL 4429575 (App. 2015). However, Division One noted that the facts of the two cases were so different that *Sisco* did not direct a different result in this case. Even if *Sisco* could be read to apply to Cheatham’s case, according to Division One it would disagree and adhere to its own analysis,

ISSUE:

The passage of [the] Arizona Medical Marijuana Act renders possession and use of marijuana lawful under some circumstances. Cheatham argued that police officers could no longer rely on plain smell of marijuana alone for probable cause. The trial court denied the suppression motion. The Court of Appeals affirmed. Did the lower courts err?

DEFINITIONS:

Arizona has adopted the “plain smell” doctrine, which is similar to the “plain view” doctrine. See *State v. Harrison*, 111 Ariz. 508 (1975) (“plain smell” of marijuana detected around vehicle provided probable cause for detaining officer to make further search and arrest driver). In Arizona, “To invoke the plain view/smell exception to the warrant requirement for a search, a police officer must lawfully be in a position to view/smell the object, its incriminating character must be immediately apparent, and the officer must have a lawful right of access to the object.” *State v. Baggett*, 232 Ariz. 424, 428 n. 10 (App. 2013).

The AMMA provides in relevant part:

A registered qualifying patient or registered designated caregiver is not subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege . . . [f]or the registered qualifying patient's medical use of marijuana pursuant to this chapter, if the registered qualifying patient does not possess more than the allowable amount of marijuana.

A.R.S. § 36-2811(B)(1).

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